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Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE UNITED STATES
October Term, 1986

No. _____

SAMUEL VRETTA, Petitioner

vs.

UNITED STATES OF AMERICA, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

July 15, 1986
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QUESTIONS PRESENTED

1. Can deceased kidnapping victims out-of-court declarations that petitioner made prior death threats and committed prior bad acts against him be admissible to rebut assertions in petitioner's opening statement that petitioner was a peaceful man who was mentally and physically incapable of committing the kidnapping charged, or to show that he had the propensity to commit the crime charged?

Not answered by the trial court.

Answered by the Court of Appeals: Yes.

2. Can deceased kidnapping victims allegations to third parties that petitioner made prior death threats and committed prior bad acts against him be

admissible under Rule 804(b)(5) of the Federal Rules of Evidence to show petitioner's intent or motive to commit the crime of kidnapping contrary to 18 U.S.C. s. 1201(a)(1)?

Answered by the trial court: No.

Answered by the Court of Appeals: Yes.

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The petitioner, Samuel Vretta, respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on May 13, 1986.

OPINIONS BELOW

The Opinion of the Court of Appeals appears in the attached Appendix. In the Opinion, the Court of Appeals denied petitioner a new trial and affirmed his conviction. It is from that denial that petitioner requests relief.

JURISDICTION

The decision of the United States Court of Appeals for the Seventh Circuit was entered on May 13, 1986. This Petition for Certiorari was filed within sixty (60) days of that date and this Court's jurisdiction is invoked under 28 U.S.C. Section 1254.

STATUTORY PROVISIONS INVOLVED

18 U.S.C. 1201(a)(1)

> (a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when:
>
> 1. the person is willfully transported interstate or foreign commerce;

Rule 404(a)(1) of the Federal Rules of Evidence

> (a) Character evidence generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

1. Character of accused. Evidence of a pertintent trait of his character offered by an accused, or by the prosecution to rebut the same.

Rule 405 of the Federal Rules of Evidence

(a) Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

Rule 803(3) of the Federal Rules of Evidence

A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

Rule 804(b)(5) of The Federal Rules of Evidence

A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of

> justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

STATEMENT OF THE CASE

On January 24, 1986, the petitioner, Samuel Vretta, was indicted by a federal grand jury for the kidnapping of Allan H. Hauser of Elm Grove, Wisconsin in September, 1983, contrary to 18 U.S.C. Section 1201(a)(1). The petitioner's trial commenced in U.S. District Court for the Eastern District of Wisconsin before a jury on October 1, 1984. The jury returned a guilty verdict on the one count Indictment on October 12, 1984; and on November 5, 1984, the petitioner was sentenced to the maximum

term of life imprisonment. Petitioner appealed his conviction to the United States Court of Appeals for the Seventh Circuit which affirmed his conviction. It is from this decision that petitioner seeks this Court's review.

The kidnapping in question occurred on September 20, 1983, when between the hours of 1:00 P.M. and 3:00 P.M., Allan Hauser was taken against his will from Elm Grove, Wisconsin. In the wake of his disappearance, his son, Mark, was found strangled in the family home. On September 22, 1983, a body identified as Allan Hauser was found in rural Tennessee. He had also been strangled.

The petitioner, Samuel Vretta, was considered as a suspect by the F.B.I., because several years before Hauser's abduction Vretta had invested $25,000.00

in a photographic developing technique which Hauser claimed would revolutionize the photographic industry. When Hauser failed to return Samuel Vretta's investment as promised, he filed suit and obtained a default judgment. Samuel Vretta had been defrauded.

Evidence at trial established that Hauser had perpetrated similar schemes on scores of other people. State and federal investigative files established that in the past twenty years, Hauser had defrauded over 72 people of in excess of $500,000.00 As a result of his activities, Hauser was ultimately charged and convicted of securities fraud and received a jail sentence in 1983.

In an attempt to enforce his Judgment, Vretta hired an investigator

who ultimately agreed to accept a percentage of any money he was successful in collecting from Hauser. This agreement was signed in July, 1982.

Early on, DeSalvo showed a proclivity to use unusual means to collect money from Hauser. In August, 1981, he organized a meeting in Milwaukee with defrauded investors and state and federal investigators. Thomas Walz, the Internal Revenue Service agent present at the meeting, described DeSalvo as being "threatening and intimidating" toward Hauser.

DeSalvo admitted that he used various pressure tactics in an attempt to collect petitioner's Judgment. Aside from making frequent contact, he pressured Hauser by fomenting state and federal investigations of Hauser.

DeSalvo also testified to a discussion he had with Vretta about using "muscle" in order to scare Hauser into paying the Judgment. Finally, at trial, DeSalvo was quoted as stating that "the only two motives that would cause Allan Hauser to pay would be fear of going to jail and fear of getting hurt." (See, DeSalvo, page 74, and Trans. page 927).

Allan Hauser went to jail in March, 1983 as the result of his fraud conviction. In July, 1983, the Hauser residence was vandalized by an unknown individual or individuals who threw smoke bombs into the Hauser residence. During the same month, Vretta sent a handprinted note to Hauser urging him to return his funds.

On September 20, 1983, the day Allan Hauser was abducted, Samuel Vretta checked into the White Court Motel in Milwaukee, Wisconsin. The same day, petitioner rented a car from an agency in Milwaukee. An Elm Grove resident, Joan Stergiades, testified that at approximately 12:00 noon on that date she observed a vehicle similar in description to the vehicle rented by Vretta turn into the Hauser driveway. She could not, however, identify the driver of the vehicle as Vretta. In fact, some of the physical descriptions that she gave of the driver were inconsistent with the petitioner's appearance.

At approximately 1:50 P.M. the day of the kidnapping, a sanitation worker observed a black, shiny, unknown vehicle

with unknown occupants turn into the Hauser driveway. No further identification of this vehicle was made by any persons investigating this case.

At approximately 3:00 PM on the same day, Mark Hauser was found strangled in the family home and Allan Hauser was missing. Paul DeSalvo admitted that he telephoned the Hauser residence later that same afternoon shortly after Mark Hauser's body was found.

Thomas Burke occupied the motel room adjoining that of Samuel Vretta at the White Court Motel on September 20, 1983. In the evening prior to 10:00 P.M., Burke heard Vretta pull up in his vehicle and enter his room. The walls between Burke's room and Vretta's room transmitted sound easily enough to permit a conversation to be heard from

one room to the next. In spite of that fact, Mr. Burke heard nothing unusual coming from Vretta's room during his entire stay.

The next morning, at approximately 6:00 A.M., Burke observed the petitioner alone near his Volkswagon van. At this time, both the door to Samuel Vretta's motel room and the van were wide open. Burke did not see Allan Hauser or anyone else in the van, the motel room or in the vicinity.

At aproximately 7:00 A.M. that morning the petitioner drove his van into the gas station across the street from the Rent-A-Heap Agency to inquire what time the rental agency opened. While waiting for the agency to open, Samuel Vretta parked his van and chatted with the gas station attendant inside

the station. He returned the rental car a short time later.

Allan Hauser's body was found on the morning of September 22, 1983 in Bedford County, Tennessee. An autopsy revealed that he had numerous contusions and lacerations on his body. Skin on a portion of his foot was detached, which the examining physicians hypothesized was caused by the application of heat to the area. Cause of death was determined to be asphixia secondary to strangulation.

At trial numerous pieces of circumstantial physical evidence were introduced in an attempt to tie Vretta to the kidnapping and the murders of both Hausers. (See Opinion, App. Pg. 4). Several strands of unknown hair were found on Mark Hauser's body along

with various fibers. None of these were consistent with Samuel Vretta's hair. In addition, unidentified fingerprints found in the Hauser residence were also not those of the petitioner. The F.B.I. serologist, William Eubanks, made a thorough check of the motel room that Samuel Vretta rented on September 20, 1983 and no traces of human blood were found.

At trial, numerous witnesses were permitted, over defense objection, to testify about statements made by Alan Hauser regarding threats, and prior bad acts he attributed to Samuel Vretta. Harvey Whitehouse testified that Hauser had told him Samuel Vretta was responsible for throwing a smoke bomb in his house, an allegation which Whitehouse reported Samuel Vretta denied. Joseph Rogers, the investigator

working for the Milwaukee County District Attorney's Office, which was in the process of investigating Hauser, testified that between August, 1981 and February, 1982, was told by Hauser that he had recently received "threatening" telephone calls from Samuel Vretta. Rogers could not state whether these "threats" pertained to the use of violence or legal means to enforce the money judgment. Rogers did testify that around this time Hauser had claimed another person by the name of Hiller had threatened his life.

DeSalvo, Vretta's investigator, also testified for the Government regarding threats. According to DeSalvo, Hauser called him at home early in the morning in the summer of 1983 and told him Samuel Vretta had thrown a Molotov

cocktail at his home. In another conversation, Hauser told DeSalvo that Vretta had threatened to kill him. DeSalvo had personal knowledge of other defrauded investors who had threatened Allan Hauser.

Kathryn Stowe, a personal friend of Hauser's, testified that Hauser complained of numerous threats in 1982 and 1983 against his life and his family's life. Stowe stated Hauser claimed that Vretta, who she thought was a dentist,was the source of these threats.

Hauser's wife, Roberta Hauser, also testified for the prosecution regarding threats allegedly made by Samuel Vretta. According to Mrs. Hauser, in approximately April, 1983, she received a phone call from a person identifying himself

as Samuel Vretta. In this conversation the person told Mrs. Hauser that "terrible things" would happen if he did not get his money back. (Trans., page 389) Mrs. Hauser testified there were a number of occasions in which she received phone calls from a man claiming to be Samuel Vretta and she passed these calls on to her husband. On one of these occasions, she testified her husband came downstairs and said "that crazy idiot wants to kill me." Mrs. Hauser was unable to positively state the person she was talking to was actually Samuel Vretta.

In pretrial proceedings and during trial, the petitioner objected under Rule 401 and 403 of the Federal Rules of Evidence as to the admissibility of the hearsay threat statements and prior bad

acts attributed to petitioner, on the grounds that they were being used solely to show that petitioner had the propensity to commit acts of violence and not for any other legitimate purposes. This was especially evident given the Government's argument that petitioner personally murdered both Mark and Allan Hauser. Petitioner's central concern was that the Government wanted to convert a kidnapping case into two murder cases.

Ultimately, the trial court held that the threats and bad acts were admissible under Rule 803(3) to establish the state of mind of Allan Hauser not to consent to go anywhere voluntarily with petitioner: an element of the offense of kidnapping.

The Court of Appeals for the Seventh Circuit declined to rule on whether the threat evidence and prior bad acts were admissible under Rule 803(3), but held instead that they were admissible under Rule 804(b)(5) to show petitioner's motive to commit the kidnapping and to rebut the defense contention that petitioner was a non-violent man incapable of committing acts of violence. (See Opinion, App. Pg. 14)

REASONS FOR GRANTING THE WRIT

I. SUPREME COURT REVIEW IS NECESSARY BECAUSE THE COURT OF APPEALS DECISION IS IN CONFLICT WITH RULE 404 OF THE FEDERAL RULES OF EVIDENCE AND PERTINENT DECISIONS OF THE SUPREME COURT WHICH PROSCRIBE USING PRIOR INSTANCES OF BAD CONDUCT TO PROVE A DEFENDANT'S PROPENSITY TO COMMIT THE CRIME CHARGED OR TO PROVE IN THE FIRST INSTANCE THAT A DEFENDANT HAS A BAD CHARACTER.

In justifying the admissibility of the death threat statements described

above, the Court of Appeals stated:

> The evidence of the threats against Allan Hauser and the smoke bombing of his home rebutted Vretta's defense that he was a peaceful man. At page 14.

The Court of Appeals noted further that the threat evidence was permissible to show petitioner's "rising anger and frustration" which "overwhelmed his judgment leading him to commit these atrocious crimes." At page 14.

One of the most notible U.S. Supreme Court Opinion's on this subject is Michaelson v. United States, 335 U.S. 469, 69 S.Ct. 213, 93 L.Ed. 168 (1948) in which the Court noted:

> Courts that follow the common-law tradition almost unanimously have come to disallow resort by the prosecution to any kind of evidence of a defendant's evil character to establish a probability of his guilt ...
>
> The prosecution may come forward with evidence rebutting good charac-

> ter only when the accused has called character witnesses to testify to his character. At pages 474, 475. (Emphasis added.)

Rule 404 and 405 of the Federal Rules of Evidence codifies and expands the holding in Michaelson by proscribing use of prior bad acts to show criminal propensity, but permitting rebuttal by the prosecution only if put into issue by an accused. An opening statement by counsel for the defendant is not considered to be placing the defendant's character in issue. U.S. v. Tomaiolo, 249 F.2d 683, 689 (2d Cir. 1957).

Even if the accused places his character in issue by eliciting opinion or reputation testimony, proof of specific instances of conduct, such as in this case, is only permissible in cases where the trait or character of a person is an esstential element of the

charge, claim or defense. None of these situations pertain here.

In the instant case, petitioner did not put any character trait in issue before or during the Government's case in chief which would have justified admitting the death threat statements. The purpose of this evidence was clearly to show that petitioner acted in conformity with the alleged death threats and murdered Mark and Allan Hauser. These arguments caused the question of who kidnapped Allan Hauser to become almost superflous.

II. SUPREME COURT REVIEW IS NECESSARY TO RESOLVE A CONFLICT AMONG THE CIRCUITS AS TO WHEN PRIOR BAD ACTS, SUCH AS DEATH THREATS, BECOME RELEVANT TO SHOW INTENT OR MOTIVE TO COMMIT A CRIME SUCH AS KDINAPPING AND WHETHER SUCH BAD ACTS WOULD BE ADMISIBLE UNDER RULE 804(b)(5).

Many circuits hold that in order for a prior criminal act to be introduced as

extrinsic evidence of the defendant's intent or motive to commit the crime charged, the two events must show the "same" state of mind.

U.S. v. Mitchell, 666 F.2d 1385 (11th Cir. 1982)

Other circuits contend that the intent of the extrinsic and charged offense need only be "similar" in nature to be admissible.

U.S. v. Farley, 636 F.2d 517 (D.C. Cir. 1980)

Still other circuits contend that extrinsic proof of prior bad acts to show intent or motive must:

1. be similar enough and close in time to be relevant;

2. be clear and convincing;

3. have probative value outweighed by any prejudicial effect, and;

4. be a disputed issue in the case. U.S. v. Berkwitt, 619 F.2d 649 (7th Cir. 1980).

With such a diversity of perspectives in the circuits as to when prior bad acts are admissible under "intent" and "motive" exceptions, the trial courts need more guidance if a uniform approach is to be accomplished.

In United States v. Miller, 508 F.2d 444 (7th Cir. 1974) the Court warned of the dangers of admitting other crime evidence to show "intent". The Court noted:

> ... Since intent is always an issue, it would emasculate the rule that evidence of other crimes may always be admitted to show criminal intent. (At page 450)

Clearly there are vast differences between the mental state of someone with

an intent to threaten death and the mental state of a person inclined to kidnap.

Moreover the Court of Appeals decision wrongfully overrules the trial court's view that these threat statements were only admissible under Rule 803(3) and that Rule 804(b)(5) did not apply to the facts of this case in that there was other evidence more probative on the point of the victim's state of mind.

In admitting the threat evidence under Rule 804(b)(5) the Court of Appeals suddenly places the state of mind of the petitioner in issue thus his propensity to commit the crime charged - a clearly prohibited use of the evidence.

In finding that the statements were trustworthy, the Court of Appeals ignors the four relevant indicia of a hearsay declaration's trustworthiness as set forth in Dutton v. Evans, 400 U.S. 74, 91 S.Ct. 210, 27 L.Ed. 213 (1970).

> 1. The statement includes no express assertion of past fact;
> 2. The declarant had personal knowledge of the identiy and role of participants in the crime;
> 3. The possibility is remote that the declarant was relying on faulty recollection; and,
> 4. The circumstances under which the statement was made gave no reason to believe that the declarant had misrepresented defendant's involvement in the crime.

Analyzing Hauser's hearsay threat statements with respect to these factors causes the Government's attempts to make the statements seem trustworthy and reliable to fail miserably. First, the statements are impregnated with

assertions of past facts: threats, death threats, and smoke bombings. Second, it is unknown whether Allan Hauser had personal knowledge of the identity and role of the participants in the prior criminal actions against him. None of the testifying witnesses were able to state from what source Allan Hauser received any threats or how he knew he was being threatened by Vretta. In addition, it is very unlikely that Hauser had any personal knowledge of the identity and role of the participants in the vandalization of his home in Elm Grove, since the perpetrators were unknown, and no one was ever charged for this crime. Third, it is impossible to know whether Hauser was relying on faulty recollection in relating his version of petitioner's bad acts,

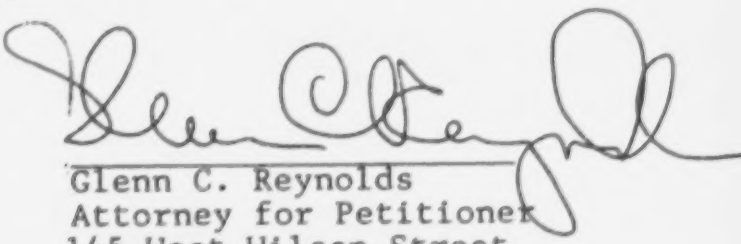
although the details of the threats and bad acts changed slightly. Fourth, the circumstances under which Hauser's statements were given gave cogent reasons to believe the declarant had not only the character, but a motive to, misrepresent the petitioner's actions.

Under the circumstances proof of the prior bad acts attributed to petitioner were not "material" to the issues presented in his kidnapping: they were not "trustworthy" as defined by prior opinions of this Court. Accordingly the Court of Appeals erred by admitting this death threat evidence and other bad acts under Rule 805(b)(5).

CONCLUSION

In the interests of justice, this Court must grant this Petition to determine whether petitioner is entitled

to a new trial or whether this case should be remanded to the Court of Appeals to determine whether these allegations of death threats and other bad acts were admissible under Rule 803(3) as originally decided by the trial court.



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In the

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For the Seventh Circuit

No. 84-2991

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SAMUEL VRETTA,

Defendant-Appellant.

Appeal from the United States District Court for the
Eastern District of Wisconsin.
No. 84-CR-14—**Terence T. Evans**, *Judge.*

ARGUED JANUARY 9, 1986—DECIDED MAY 13, 1986

Before CUDAHY and COFFEY, *Circuit Judges*, and ESCHBACH, *Senior Circuit Judge.*

COFFEY, *Circuit Judge.* The defendant, Samuel Vretta, was indicted by a grand jury for kidnaping Allen Hauser, in violation of 18 U.S.C. § 1201. Vretta was found guilty after a seven day jury trial and was sentenced to life imprisonment. Vretta appeals his conviction. We affirm.

I

The evidence reveals that Vretta met Allen Hauser in 1978 in Dearborn, Michigan where Hauser sold Vretta on investing his life savings of $25,000 to help underwrite Hauser's development of an alleged light sensitive photo-

graphic process. Vretta subsequently demanded the return of his money, pursuant to the terms of the investment agreement that allowed Vretta to request a refund by "June 1, 1979." Hauser failed to return Vretta's investment. Vretta became aggravated about not having his money returned and retained a lawyer to sue Hauser for the return of his investment. Vretta's lawyer obtained a default judgment against Hauser in a Wisconsin state trial court in 1981, but was unable to satisfy the court judgment. Vretta's next step was to hire a private investigator named Paul DeSalvo to determine if Hauser had any collectible assets. DeSalvo stated that Vretta became increasingly frustrated with his inability to uncover any collectible assets and/or recoup his investment. The record reveals that thereafter Vretta took matters into his own hands and began making threats and performing an act of vandalism toward Vretta and his family in an attempt to force Hauser to return his money. In support of its contention concerning Vretta's actions, the government introduced telephone records at trial demonstrating that Vretta called Hauser on numerous occasions between late 1981 and September 20, 1983, the day Allen Hauser disappeared from his Elm Grove, Wisconsin home. As detailed later in this opinion, several witnesses were allowed to testify at trial that Allen Hauser had told them that Vretta had made verbal telephone threats against Hauser's life and his family. At trial, the government also established that Vretta threw a smoke bomb into the Hauser home in July of 1983, two months before the kidnaping.

The evidence demonstrates that on September 20, 1983, at approximately 10:00 a.m., Vretta registered at the White Court Motel in Milwaukee, Wisconsin. Shortly thereafter, at approximately 10:15 a.m. he rented a rusted, green Buick Skylark from a nearby car rental agency licensed as "Rent-A-Heap" and after renting the Skylark, Vretta parked his own white and orange Volkswagen van at a gas station across the street from the "Rent-A-Heap" agency. Sometime thereafter, on September 20, 1983, between 11:30 a.m. and 12:00 noon, a neighbor of the Hausers

spotted a rusted, drab green car pulling into the Hauser driveway in Elm Grove, Wisconsin. Mark Hauser, one of Hauser's sons, who was employed on the second shift at a local restaurant, was home on that particular day as he had a scheduled doctor's appointment for 1:10 p.m. that afternoon. The government's investigation revealed that he failed to keep that appointment and at approximately 3:00 p.m. on that day his sister, Michelle, arrived home and found her brother's lifeless body lying face down in the Hauser's family room, his hands and ankles bearing ligature marks from being tied together, indicating that restraints had been used and later removed. The government investigators also discovered blood stains on the Hauser's living room carpeting, consistent with the blood of Allen and Mark Hauser.[1]

Allen Hauser's wife recounted that on that same day, September 20, 1983, Allen Hauser arrived at his home about 7:30 a.m. after returning from the County Jail where he was serving a one-year sentence for fraud under a work release program. After Allen Hauser dropped his wife off at work at 9:30 a.m., he arrived at the business of a Kathryn Stowe, a family friend, at 9:45 a.m. He took her car to a service station and left the service station some time between 12:30 and 1:00 p.m., which was the last time Allen Hauser was seen alive. Later that day, Mrs. Stowe's car was found parked in the Hauser driveway and Stowe's car keys were found on the floor of the Hauser living room.

The next day, September 21, 1983, at approximately 6:00 a.m., the person residing in the room next to Vretta's room at the White Court Motel observed Vretta outside of his motel room. Vretta returned the rented green Buick Skylark to Rent-A-Heap at 8:00 a.m. and returned to the motel where he checked out. On the day following, September 22, 1983, Allen Hauser's badly beaten and bruised body was found in rural Bedford County, Tennessee. He had been strangled to death by "a narrow band-like ob-

[1] Both Allen and Mark Hauser had the same blood type.

ject placed around his neck." Tr. at 584. Circumstantial evidence introduced at trial revealed that a piece of fiber found on Hauser's pants was identical to the carpet fibers found in the green Buick Skylark that Vretta had rented in Milwaukee; also, a piece of cloth fiber matching Allen Hauser's pant fibers was found on the rear seat of the rented green Buick Skylark. Further, the Skylark's backseat contained bloodstains consistent with Allen Hauser's blood. Results of the criminal investigation into the kidnaping and murders also revealed that fibers from the Vretta's white and orange Volkswagen van were also found on Allen Hauser's shirt and pants; and a hair strand found on Hauser's sock was determined to be "microscopically matched" to that of the hair of Vretta. At trial, a forensic pathologist, who examined Allen Hauser's body, testified to a reasonable degree of medical certainty that Hauser probably expired some time after he left the State of Wisconsin. Further, an FBI agent testified that when he interviewed Vretta at his Florida retirement residence on September 24, 1983, Vretta stated he was glad that Hauser had been killed even though the FBI agent had no knowledge as of that time that Hauser was deceased. The agent also testified that Vretta denied ever having been in Elm Grove, Wisconsin.

Vretta raises the following issues on appeal: (1) whether the court erred in allowing evidence of Mark Hauser's death to be received during his trial for kidnaping; (2) whether the court erred in allowing into evidence the threats to Hauser supposedly attributable to Vretta; and (3) whether the court erred in allowing into evidence the fact that Allen Hauser had been "tortured" prior to his death.

II

Mark Hauser's Death

Prior to trial, the defense submitted a motion in limine, seeking to exclude from the evidence to be presented at trial, the facts and circumstances of Mark Hauser's death.

Defense counsel argued to the district court judge that the issue the government was obligated to prove was whether Allen Hauser was taken from his house voluntarily. Although defense counsel acknowledged the fact that Mark Hauser was strangled was probative for the question of whether Allen Hauser left his home voluntarily, he believed that the prejudicial effect of introducing the facts and circumstances of Mark Hauser's death outweighed its probative value. The attorney concluded that introducing evidence concerning Mark Hauser's death "attempt[s] to make a kidnaping case into a murder case and a kidnaping and would create such a diversion in the jury's mind that their focus is really going to be on the, on the terrible circumstances of what is apparently a very unfortunate and unnecessary death rather than specific elements of kidnaping." Defense counsel stated that "to . . . attempt to cooperate with the government and to avoid the prejudicial impact of Mark's death, I would be willing to stipulate that if Allen Hauser was abducted, that he went along involuntarily."

The government responded to the motion in limine arguing that its case was largely circumstantial and that "there is an awful lot of the circumstantial evidence that the government wishes to offer during the course of this trial that has to do with the identity of Mr. Vretta as being the perpetrator of these acts." Additionally, the government contended that introducing evidence with regard to activities at the residence was necessary to establish motive; in the government's view, the crime may have begun "as a simple house burglary to acquire whatever one could with no one home" but "catapulted itself by the course of events" into a double murder. Moreover, the government argued that it was entitled to introduce the details of Mark Hauser's death because both Mark and Allen Hauser were killed in the same manner; that is, they were both strangled by "a cord around the neck and pulled from behind." Further, the government argued that the evidence "assists the government with respect to defense counsel's anticipated argument that there were

no ransom notes with respect to the events that occurred, particularly with respect to Allen Hauser." Finally, the United States Attorney concluded that the evidence from Mark Hauser's death must be admitted "so that the jury has an understanding of what the totality and the interrelationship of the parties are here."

The court rejected the motion in limine because the probative value of the evidence of Mark Hauser's death outweighed its prejudicial effect. Additionally, the district court judge reassured defense counsel that he would exclude evidence that was gruesome and likely to influence the jury.

Under Fed. R. Evid. 403,[2] "[i]t is well settled that evidence is unfairly prejudicial only if it 'will induce the jury to decide the case on an improper basis, commonly an emotional one, rather than on the evidence presented . . . .' " *Cook v. Hoppin*, 783 F.2d 684, 689 (7th Cir. 1986) (quoting *United States v. Medina*, 755 F.2d 1269, 1274 (7th Cir. 1985). Evidence is relevant if its exclusion would leave a chronological and conceptual void in the story. *United States v. Hattaway*, 740 F.2d 1419, 1425 (7th Cir.), *cert. denied*, 105 S. Ct. 599 (1984). Further, we may find error in a district court's evidentiary decisions only if the "court clearly abused its discretion" in admitting the evidence. *United States v. Peco*, 784 F.2d 798, 800 (7th Cir. 1986); *United States v. Rovetuso*, 768 F.2d 809, 815 (7th Cir. 1985) ("A district court has broad authority to control the admission of evidence . . . ."); *United States v. Tuchow*, 768 F.2d 855, 863 (7th Cir. 1985).

The evidence at trial indicated that Mark Hauser's murder in all probability occurred shortly before or in the

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[2] Rule 403 provides:

> "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

immediate proximity to the time that Allen Hauser returned home. A drab green rusted car, similar to the car rented by Vretta, was observed pulling into Hauser's driveway between 11:30 a.m. and 12:00 noon on September 20, 1983, the date of the kidnaping and murder. It is reasonable to conclude that Mark Hauser was at home at this time as he had a scheduled doctor's appointment at 1:10 p.m. that day, which he failed to keep. Allen Hauser, who left a service station between 12:30 and 1:00 p.m. with Stowe's car apparently returned to his home a short time thereafter as Stowe's car was found parked in the Hauser driveway and the car keys were found on the living room floor.[3] When Allen Hauser's daughter, Michelle, returned home about 3:00 p.m. that day, she discovered Mark's lifeless body face down on the family room floor, with his feet positioned together and his hands placed behind his back; there were ligature marks on both his ankles and wrists indicating that restraints had been used and later removed. Mark was 6'2" and 250 pounds, and was in all probability strangled to death by a thin strong material, possibly a wire or nylon cord. There were no signs of a struggle in the family room where he was found. On the other hand, the living room was strewn with papers, and blood stains discovered on the carpeting were analyzed and found to be consistent with that of Allen Hauser.

The defendant contends that he offered to stipulate that Hauser did not consent to be taken from his home and thus the evidence of Mark's death was not relevant. However as defense counsel himself admitted at trial in his closing remarks to the jury, Mark Hauser's death was "inextricably intertwined with Allen Hauser's abduction." Tr. October 11, 1984 at 145. Indeed, the evidence concerning Mark's death was relevant to the timing of Allen Hauser's

[3] The Elm Grove police noted that they found the car keys in the living room and the car parked on the driveway after responding to the Hauser daughter's call informing them that she had discovered her brother's lifeless body in the family room.

kidnaping and the violence used to restrain and kidnap him. Mark's death was also relevant as it was likely that Hauser was kidnaped and murdered because he was a witness to Vretta's presence in the house near the the time of his son's murder. Further, one of Vretta's defenses at trial was that he was not only mentally incapable but also physically incapable of the brutal kidnaping and murder of Allen Hauser. Vretta is a small man, approximately 5'8" in height and weighing 160 pounds. It is probable that because of his smaller size he may have taken Mark by surprise from behind or while Mark was sleeping. Moreover, as testimony concerning the manner of Allen Hauser's death later confirmed, Mark and Allen Hauser were strangled to death in a similar manner, with a cord pulled around the neck. Thus, the evidence concerning the circumstances of Mark's murder helps to establish that Vretta was entirely capable of committing this brutal kidnaping. We are convinced that the evidence of Mark's tragic death was relevant because to exclude it, "would have left a 'chronological and conceptual void' in the story" of Allen Hauser's kidnaping. *United States v. Hattaway*, 740 F.2d 1419, 1425 (7th Cir.), *cert. denied*, 105 S. Ct. 599 (1984). The jury, in reviewing, weighing and piecing together the evidentiary jigsaw puzzle when determining the ultimate question of guilt or innocence, was entitled to a complete and accurate picture of the crime scenario, from the time the green Buick Skylark, rented by Vretta, arrived at the scene of the crime until the kidnaper departed from the Hauser home. This case was based upon circumstantial evidence and " 'circumstantial evidence is of equal probative value to direct evidence.' " *United States v. Marquardt*, 786 F.2d 771, 780 (7th Cir. 1986) (quoting *United States v. Towers*, 775 F.2d 184, 188 (7th Cir. 1985). Since Vretta's defense at trial was that he did not kidnap Hauser, the circumstances surrounding Mark Hauser's death were relevant as they established Vretta's presence in the Hauser's home near the time of Mark's murder, with the kidnaping following immediately thereafter, and that Vretta was capable of accomplishing the kidnaping of Allen Hauser. The defense counsel's proposed

stipulation would have left a "sanitized" version of the crime with too many gaps and questions left dangling concerning the crime scenario, thus forcing the jury to speculate.

Moreover, an examination of the record reveals that the government was extremely cautious in its presentation of the evidence, revealing only that quantum of proof absolutely necessary to establish that Mark Hauser's death, as the defense counsel conceded in his closing argument, was "inextricably intertwined" with the kidnaping of Allen Hauser. Furthermore, the government did not dwell on its details, rather it elicited only that testimony detailing that Mark's body was found in the family room, that he had been strangled to death and that there was no sign of struggle or any blood in the family room. Thus, we reject defense counsel's argument, based on *United States v. Ostrowsky*, 501 F.2d 318 (7th Cir. 1974), that the evidence of Mark's murder was a "gruesome" and "unnecessary" detail of a person's murder that was only tangentially related to the crime charged in the indictment. We hold, after a review of the record and the application of the controlling case law, that the district court did not abuse its discretion in admitting evidence of Mark Hauser's death.

Testimony of Threats

Vretta next asserts that the trial court erred in admitting Allen Hauser's out-of-court declarations that Vretta had made threats against his life. Specifically, Joseph Rogers, an investigator with the Milwaukee County District Attorney's Office, testified that Hauser had called him during August of 1981 and informed Rogers that Vretta had been making threatening phone calls to him. Harvey Whitehouse, whose wife also invested with Vretta in Hauser's photo developing processing scheme, testified that Hauser informed him that during the summer of 1983 Vretta had thrown a smoke bomb into the Hauser home. Also Paul DeSalvo, Vretta's investigator, testified that Hauser told

him that Vretta had threatened to kill him. Kathryn Stowe, a friend of Allen Hauser, further testified that Hauser had mentioned to her on a number of occasions from 1982 through the summer of 1983 that Vretta had been threatening him. Finally, Roberta Hauser, Allen's wife, testified that she spoke with a person on the telephone in the spring of 1983, who identified himself as Sam Vretta and who stated that "terrible things would happen" if he (Vretta, the phone caller) did not get his money back. Immediately thereafter Allen Hauser spoke with Vretta on the Hauser's upstairs phone, during the same telephone conversation, and returned downstairs where he told his wife, referring to Vretta, "that crazy idiot wants to kill me."[4]

The court initially allowed this testimony in evidence under Fed. R. Evid. 803(3) and 804(b)(5) as an exception to the hearsay rule. The court noted that Fed. R. Evid. 803(3) (state of mind) would allow the admission of this evidence to demonstrate that Allen Hauser was fearful of Vretta and thus Hauser would never willingly leave the State of Wisconsin with Vretta.[5] The court subsequently

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[4] This statement was properly admitted as an excited utterance under Rule 803(2). Vretta argues the government never proved that the person on the phone was actually Vretta since Mrs. Hauser identified the caller as Vretta only because that is how the caller introduced himself. Other evidence introduced at trial concerning Vretta's conduct established that it was most likely Vretta on the phone. Mrs. Hauser testified that it was the same voice that had called on numerous occasions asking for her husband and the telephone records at trial established that Vretta had called Hauser on numerous occasions. Also Vretta stipulated at trial that he sent a letter to Hauser, dated July 18, 1983, that contained the statement "return my money before its too late for you," which was similar to the threat delivered over the phone to Mrs. Hauser. Further, it was clearly established at trial that Vretta's motive to make the threatening call was to induce repayment of his money.

[5] As mentioned earlier, the defendant argued that this evidence was irrelevant as he was willing to stipulate to the issue of consent.

instructed the jury that it could consider this evidence in determining Hauser's "feelings about Mr. Vretta" as this evidence "may be relevant on the issue of whether or not he voluntarily left Wisconsin with Mr. Vretta." The court also initially determined that this evidence was admissible under Fed. R. Evid. 804(b)(5), the "other exceptions" provision to the hearsay exclusionary rule that allows admission of hearsay statements when the declarant is unavailable to testify. One of the requirements of Rule 804(b)(5) is that the statement is "more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts." After Roberta Hauser testified that she spoke with a man on the phone, whom she recognized as Sam Vretta not only from his identification of himself as Sam Vretta but also from having heard his voice on previous occasions, and that the man told her "terrible things would happen" if his money was not returned, the trial court noted that one of the requirements of Rule 804(b)(5) was not satisfied since Roberta Hauser's testimony was "more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts." (Tr. at 408). Thus the court determined that the other hearsay testimony did not meet the rule's requirements.[6] The district court admitted this evidence only under Rule 803(3) to establish the state of mind of Allen Hauser that he would not voluntarily leave his Wisconsin home with Vretta.

Vretta argues that the district court erred in admitting evidence concerning threats made against Allen Hauser under the state of mind exception to the hearsay Rule

[6] Although the court did not specifically state its reasons as to why the hearsay testimony detailing the threats was not as probative as Roberta Hauser's testimony of the threat made directly to her, we are convinced the court believed that Roberta's testimony was more probative as to the defendant's intent to do harm to Hauser than the testimony referring to the threats against Vretta.

803(3) since these statements contained facts "remembered or believed" and Rule 803(3) does not include statements "of memory or belief to prove the fact remembered or believed" within the exception to the hearsay rule. Fed. R. Evid. 803(3).[7] The defendant also argues that the evidence was not admissible under Rule 804(b)(5) as Allen Hauser had a "reputation as a con artist" and thus was not a reliable declarant. While the evidence may very well have been admissible under Rule 803(3) (state of mind), we do not reach this issue since we hold that the statements were admissible pursuant to Rule 804(b)(5).[8]

Rule 804(b)(5) states that:

> "The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
>
> * * *
>
> (5) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the gen-

[7] The entire text of Rule 803(3) states:

> "Then existing mental, emotional or physical condition. A statement of the declarant's then existing state of mind, emotional, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), *but not including a statement of memory or belief to prove the fact remembered or believed* unless it related to the execution, revocation, identification, or terms of declarant's will." (Emphasis added).

[8] Our silence as to the admissibility of the evidence under Rule 803(3) is not to be construed under any circumstances as disapproval of the district court's submission of these statements under this hearsay rule exception.

> eral purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant."

One of the contested issues at trial was whether the evidence of threats was "more probative" than any other evidence offered as to Vretta's intent to commit the crime. Vretta's defense was that the government could not prove beyond a reasonable doubt he was the person who kidnaped Allen Hauser.[9] As previously noted, defense counsel attempted to establish this theory by presenting character evidence that Vretta was a peaceful man, who was mentally and physically incapable of the brutal kidnaping and murder of Allen Hauser. Vretta's defense counsel further argued to the jury that it made no sense for Vretta to kidnap and kill Hauser since he would then be unable to collect his investment from Hauser. The government successfully portrayed Vretta as a man who became increasingly frustrated in his attempt to recoup his life's savings from Hauser. Initially, Vretta hired a lawyer who obtained a default judgment for him against Hauser. Next, he went to the added expense of hiring a private investigator in an attempt to discover and attach any of Hauser's assets to satisfy the judgment, but to his dismay the investigator was unable to uncover any assets. According to the government's theory at trial, Vretta resorted to numerous threats of violence and vandalism against Hauser and his family, including the telephone threats and smoke bombing of the Hauser's home in summer of 1983. Even-

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[9] Vretta's other defense was that the interstate element of the crime of federal kidnaping was missing as Hauser had died before he left Wisconsin.

tually Vretta's frustration at his inability to recoup his investment from Hauser culminated in the murder of Mark Hauser and the kidnaping and murder of his father, Allen Hauser. The evidence of the threats against Allen Hauser and the smoke bombing of his home rebutted Vretta's defense that he was a peaceful man. Furthermore this evidence rebutted Vretta's argument that it would be illogical for him to kidnap and kill Hauser as he would be unable to collect his investment since it demonstrated Vretta's rising frustration and anger over his inability to recoup his money and that his anger and frustration overwhelmed his judgment leading him to commit these atrocious crimes. Thus, the evidence of the threats was the best evidence available, pursuant to Fed. R. Evid. 804(b)(5), to establish Vretta's motive in commiting the crime. Mrs. Hauser's testimony that the man who identified himself as Sam Vretta called and told her "terrible things would happen" if his money was not returned is a piece of the circumstantial evidence puzzle of the escalating conduct of threats made against Allen Hauser and family. This testimony, we repeat, is just one segment of the overwhelming amount of circumstantial evidence against Vretta and were it considered in isolation it would not establish a pattern of escalating threats and conduct on the part of Vretta revealing his rising anger and frustration concerning his inability to recoup his lifetime savings. Thus, the evidence of the threats was the "most probative evidence reasonably available on [the] material issue" of Vretta's motive to commit the crime. See *United States v. Boulahanis*, 677 F.2d 586, 589 (7th Cir. 1982).

Rule 804(b)(5) also states that a statement may be admitted in evidence if the "statement not specifically covered by any of the foregoing exceptions . . . [has the] equivalent circumstantial guarantees of trustworthiness" as statements admitted under the other hearsay exceptions. Vretta argues that this evidence is untrustworthy and unreliable as Allen Hauser had a "reputation as a con artist." He further argues that Hauser had a motive to lie about the threats in order to exert pressure on

Vretta to impede his collection efforts and to curry favor with the law enforcement officials who were investigating his proclivity for questionable financial activities. The district court judge properly ruled that not only did Hauser actually make the statements but also that the assertions in the statements (that Vretta had actually threatened Hauser) were reliable and trustworthy. A trial judge has considerable discretion, within the parameters of the rules of evidence, in determining whether the hearsay statements contain the necessary circumstantial guarantees of trustworthiness. See *United States v. Howard*, 774 F.2d 838, 845 (7th Cir. 1985); *Huff v. White Motor Corp.*, 609 F.2d 286, 291 (7th Cir. 1979). In this case, Hauser told a number of people about Vretta's threats toward him, thus lending credibility to the fact that Hauser made the statements concerning the threats. *See Howard*, 774 F.2d at 845 (noting that the defendant made the same statement "not only once, but twice" to witnesses). The defendant speculates that Hauser had a motive to manufacture these threats so as to curry favor with those persons investigating his investment schemes. While Hauser did complain about the threats to Rogers, the Milwaukee County District Attorney's investigator, the record also demonstrates that Hauser related the threats to two private citizens, Kathryn Stowe and Harry Whitehouse, who had no connection at all with any of the investigations of Hauser's financial dealings. It is neither apparent to us nor are we able to comprehend what Hauser might have gained, if anything, from revealing Vretta's threats to the private citizens. Thus the fact that he informed these disinterested third parties of the threats rebuts and contradicts Vretta's argument that Hauser could have been making these statements to gain sympathy from those who were investigating him. *Cf. Howard*, 774 F.2d at 845. Further, Hauser told Rogers, the District Attorney's Investigator, of Vretta's threats in August 1981, just after the threatening phone calls commenced. Also, Hauser's wife testified that just after she received the call from Vretta where he threatened that "terrible things would happen" if his money was not returned, Mr. Hauser spoke

with Vretta on Hauser's upstairs phone during the same conversation and returned downstairs where he exclaimed to his wife, in referring to Vretta, "that crazy idiot wants to kill me." The close proximity in time between the statement repeating the threat and the threat itself lends support to the statements' trustworthiness. *United States v. Van Lufkins*, 676 F.2d 1189, 1192 (8th Cir. 1982). If Vretta was truly concerned that Hauser lied about the threats, he was free to discredit Hauser and introduce evidence, under Fed. R. Evid. 806, to attack the credibility of the deceased declarant, Hauser.[10] We hold that the experienced and able trial court judge did not abuse his discretion when it found the hearsay statements trustworthy.

The defendant in desperation asserts that the admission of the threat evidence does not serve the interest of justice since the statements lack the circumstantial guarantees of trustworthiness. We have disposed of this contention in holding that the statements were trustworthy. We note that the interests of justice always will be served in admitting reliable, relevant hearsay evidence within the confines of the evidentiary boundaries in our ever never ending search for the truth.

The defendant also argues that the government failed to provide adequate notice, as required in Rule 804(b)(5), that it intended to introduce evidence of "death" threats. Prior to trial, the government sent a letter to defense counsel stating that it intended to introduce evidence of threats made by Vretta against the "health and well-being" of Allen Hauser, and included in his letter the names and addresses of the witnesses the government in-

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[10] Federal Rule of Evidence 806 provides:

"When a hearsay statement, or a statement defined in Rule 801(d)(2), (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. . . ."

tended to call. Vretta's allegation that he was prejudiced since the specific words "death threat" were not mentioned in the letter is at best described as disingenuous. At trial, Vretta's counsel, during his cross-examination of Rogers, was the first party to ask a witness about the alleged death threats. Further, the notice letter referred to the threats relating to the "health and well-being" of Allen Hauser. The wording of this letter was more than sufficient to notify the defendant of the type of evidence the government expected to introduce and thus provided him with a "fair opportunity to meet" this evidence at trial. Fed. R. Evid. 804(b)(5).

The defendant finally contends that the hearsay testimony detailing the prior threats violated his Sixth Amendment right to confrontation. As the Supreme Court stated in *Dutton v. Evans*, 400 U.S. 74 (1970) (plurality opinion), the hearsay rules and the Confrontation Clause of the Sixth Amendment "stem from the same root," but the two are not equivalent. *Id.* at 86. Thus, evidence that is admissible under a hearsay exception may be barred if it violates the defendant's Sixth Amendment right to confront witnesses against him. However, where the govenment demonstrates the "unavailability of . . . a witness . . . and . . . [makes] a strong 'showing of particularized guarantees of trustworthiness' concerning the statements . . ." the evidence satisfies any Sixth Amendment Confrontation Clause challenge. *Howard*, 774 F.2d at 846; *Flewallen v. Faulkner*, 677 F.2d 610, 613 (7th Cir. 1982).[11] In this case, taking into consideration that Hauser was unavail-

[11] Recently, the Supreme Court decided in *United States v. Inadi*, ____ U.S. ____, 106 S. Ct. 1121 (1986) that the Confrontation Clause does not require the government to demonstrate that a non-testifying co-conspirator is unavailable to testify as a condition for the admission of that co-conspirator's out-of-court statements under Fed. R. Evid. 801(d)(2)(E). The availability of Allen Hauser as a witness is not at issue in this case as he was obviously murdered and therefore was unavailable to testify. Thus we need not decide the impact of *Inadi* on the Sixth Amendment issue presented in this case.

able to testify and, as demonstrated earlier in this opinion, that the government clearly established that his statements possessed the requisite guarantee of trustworthiness, we hold that Vretta's Sixth Amendment right of confrontation was not violated when the court admitted the hearsay statements.

Evidence of "Torture"

Vretta's final contention on appeal is that the district court abused its discretion in allowing the forensic pathologist to testify that to a reasonable degree of medical certainty the detached skin on Allen Hauser's foot was probably caused by scalding the foot. On appeal, Vretta characterizes the pathologist's testimony concerning the scalding of Hauser's foot as "evidence of torture." An examination of the record reveals that at trial Vretta challenged the time of Allen Hauser's death.[12] His defense was that if Hauser died prior to leaving the state, the federal prosecutor lacked jurisdiction to pursue the kidnaping charge. In response to this defense placing the time of death in dispute, the government called a forensic pathologist who testified that, based upon the condition of the body when he examined it and assuming that Hauser was driven to Tennessee, Hauser's death occurred sometime after he left the State of Wisconsin. In the course of establishing the foundation for this conclusion, the doctor was allowed to testify as to the condition of the body. The injuries to the body, skin and feet were relevant to establish the foundation for the expert to express an opinion to a reasonable medical certainty as to Hauser's time of death. From our review of the record, the condition of the body was described in medical and antiseptic terms and we have failed to discover any testimony in the record, nor were any statements referred to us in Vretta's brief, that

[12] On appeal, Vretta failed to renew his challenge to the sufficiency of the evidence establishing that Allen Hauser died after leaving Wisconsin.

could be even remotely construed as mildly inflammatory in describing the condition of the deceased body. The defendant's contention that the district court abused its discretion in admitting this evidence is without merit.

The conviction of the defendant for kidnaping is AFFIRMED.

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Teste:

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JUDGMENT — ORAL ARGUMENT

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinos 60604

May 13, 1986.

Before

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. JOHN L. COFFEY, Circuit Judge

Hon. JESSE E. ESCHBACH, Circuit Judge

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 84-2991 vs.
SAMUEL VRETTA,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Wisconsin

No. 84 CR 14

Judge Terence T. Evans

This cause was heard on the record from the United States District Court for the Eastern District of Wisconsin, _____ Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby AFFIRMED, in accordance with the opinion of this Court filed this date.

BEST A

...ge for pursuant ...ral Rules of Procedure.

UNITED STATES DISTRICT ... U...
EASTERN DISTRICT OF WISCONSIN

U.S. DIST. COURT EAST. DIST. WISC.
FILED
at ____ o'clock ____ by
SOFRON B. NEDILSKY

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAMUEL VRETTA,

Defendant.

OCT 30 1984

Case No. 84-CR-14

ORDER

Defendant Samuel Vretta has filed a motion pursuant to Rule 33 of the Federal Rules of Criminal Procedure for a new trial. Vretta alleges that he did not receive a fair trial and was unfairly prejudiced by the admission of hearsay statements of Allan Hauser regarding threats made by Vretta and by the admission of evidence pertaining to vandalism at the Hauser residence in July, 1983 and to the murder of Mark Hauser. Throughout the course of the trial rulings were made regarding the admissibility of this evidence. For the reasons stated on the record, I again find the evidence properly admitted. Accordingly, the motion for a new trial is DENIED.

SO ORDERED at Milwaukee, Wisconsin, this 30 day of October, 1984.

BY THE COURT:

Terence Evans

TERENCE T. EVANS
UNITED STATES DISTRICT JUDGE

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